

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

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CANDACE SLAGOWSKI, *et al.*,

Plaintiffs,

V.

CENTRAL WASHINGTON ASPHALT, INC.,
et al.,

Defendants.

Case No. 2:11-CV-00142-APG-VCF

ORDER

(Dkt. ## 143, 151, 153)

This case arises out of a multi-vehicle accident on a Nevada two-lane highway which resulted in the death of Michael Slagowski and injuries to others. Third Party Defendants Mitchell Zemke, Doreen Law, Chip Fenton, and Fenton Trucking, LLC request that I grant summary judgment in their favor on Third Party Plaintiffs' comparative negligence and indemnity claims against them. Third Party Defendants contend there is no evidence they were negligent or that any negligence on their part caused or contributed to causing the accident. Rather, they contend all evidence shows Third Party Plaintiffs Central Washington Asphalt, Inc., Donald Hannon, James Wentland, and Jerry Goldsmith caused the accident. I deny these motions without prejudice pending further discovery.

Under Federal Rule of Civil Procedure 56(d) if, in response to a summary judgment motion, “a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition,” the court may defer consideration of the motion or deny it, allow the parties time to complete additional discovery, or grant other appropriate relief. The party requesting additional time to conduct discovery to oppose summary judgment must present an affidavit stating the specific facts it hopes to elicit from further discovery, that the facts exist, and that the facts are essential to oppose summary judgment. *Family Home & Fin. Ctr., Inc. v. Fed. Home Loan Mortg. Corp.*, 525 F.3d 822, 827 (9th Cir. 2008). If the nonmovant

1 does not satisfy these requirements, the court may rule on summary judgment without granting
2 additional discovery. *Id.*

3 Third Party Plaintiffs have presented affidavits indicating that further discovery is needed
4 to respond to the motions regarding the parties' comparative negligence. [Dkt. ##156-10, 157-1,
5 167-2.] Third Party Defendants filed the motions after the initial depositions of Hannon and
6 Wentland—who asserted their Fifth Amendment rights to many questions posed to them—but
7 before these witnesses were re-deposed as contemplated by Magistrate Judge Ferenbach's July 2,
8 2013 Order. [Dkt. #124 at 23, 38.] The importance of the testimony of the individuals accused of
9 causing the accident is plain. These witnesses should be able to provide information regarding
10 the relative locations, speeds, and conduct of the various drivers on the night in question, and
11 their version of the events may assist in expert analysis of who caused the accident. I therefore
12 deny without prejudice Third Party Defendants' motions for summary judgment so additional
13 discovery may be conducted.

14 IT IS THEREFORE ORDERED that Third Party Defendant Mitchell Zemke's Motion for
15 Summary Judgment on Comparative Liability [Doc. #143] is hereby DENIED WITHOUT
16 PREJUDICE.

17 IT IS FURTHER ORDERED that Third Party Defendant Doreen Law's Motion for
18 Summary Judgment [Doc. #151] is hereby DENIED WITHOUT PREJUDICE.

19 IT IS FURTHER ORDERED that Third Party Defendants Chip Fenton and Fenton
20 Trucking, LLC's Joinders to Third Party Defendant Mitchell Zemke's Motion for Summary
21 Judgment and Third Party Defendant Doreen Law's Motion for Summary Judgment (Doc. #153)
22 is hereby DENIED WITHOUT PREJUDICE.

23 DATED this 18th day of September, 2014.
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25 ANDREW P. GORDON
26 UNITED STATES DISTRICT JUDGE
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